

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. E035 (40) OF 2021**

**JANE NYAKINYWA**  
**AVUGWI-----PLAINTIFF**

**VERSUS**

**GEOFFREY CHAVAREGI LODOGOLI-----**  
**DEFENDANT**

**JUDGMENT**

1. Through a plaint dated **5/7/2021**, the plaintiff seeks:
  - (a) **Declaration that he is the rightful owner of L.R. No. 2116/942 situated within Kitale Municipality, Trans Nzoia, and that the defendant is a trespasser thereon.**
  - (b) **Eviction of the defendant, his agents, servants, or persons claiming under him.**
  - (c) **Permanent injunction.**
2. The plaintiff contends that she is the registered proprietor of the suit land measuring **1.586 Ha**, which the defendant has, without any colour of right, encroached onto about  $\frac{1}{4}$ , erected a structure thereon, and continued to occupy the same, allegedly claiming a purchaser's interest, based on a forged sale agreement dated **15/8/2012**, which the plaintiff denies its existence or knowledge.

3. The defendant opposed the suit through a statement of defence dated **14/8/2021**. He avers that one Bernard Kibende introduced him to Rebecca Wandaka Obdi, who is the plaintiff's mother, in **August 2010**, and had authority from the plaintiff to dispose of the land.
4. The defendant avers that following the representation, he paid the first instalment of **Kshs.470,000/=** to the plaintiff, in the presence of her mother and Bernard Kubende. The defendant avers that on **15/8/2012**, he made a second installment of **Kshs.30,000/=**, after the plaintiff communicated with her mother for the payment to be sent to her.
5. The defendant avers that after the payments, he commenced development and construction on the land with full knowledge and consent of the plaintiff.
6. The defendant denies the alleged fraud or forgery of the sale agreement; otherwise, the suit is filed with ill motives due to the high demand for and the current value of the land in the area. The defendant denies that he is a trespasser on the land for the plaintiff to be entitled to the reliefs sought.

7. At the trial, **Jane Nyakinywa Avugwi** testified from California, USA, where she is based as **PW1**. She relied on witness statements dated **5/7/2021** and **March 2025**. PW1 told the court that as the owner of the suit land, the defendant trespassed into a quarter of her land.
8. The plaintiff denied being party or privy to the alleged forged sale agreement dated **15/8/2012**, which the defendant relied upon, since she never sold any land to him directly or indirectly, for **Kshs.500,000/=**; otherwise, the claim is fraudulent. PW1 told the court that despite demanding that the defendant vacate the land, he has declined to do so, hence this suit.
9. PW1 relied on a grant for **L.R. No. 2116/942**, the forged sale agreement dated **15/8/2012**, the demand letter dated **8/4/2015**, and a forensic report as **P. Exhibits No. (1), (2), (3), and PMFI-No. (4)**.
10. In cross-examination, PW1 denied receiving **Kshs.470,000/=** for the land from the defendant, or authorizing him to enter, construct structures in **2015**, or continuing to live or occupying part of her land. PW1 told the court that despite demand letters dated **8/4/2015** and in **2021**, the defendant ignored

the same and instead continued occupying the land. PW1 said that he was not even in Kitale when the defendant allegedly gave her money, as she lives in California, USA.

- 11.** Martin Papa testified as **PW2**. As a trained forensic document examiner, PW2 told the court that the plaintiff in this matter instructed him to look at the signatures appearing on the sale agreement dated **15/8/2012**, against her known signature appearing in an affidavit dated **2/6/2023**, a verifying affidavit, and a witness statement dated **5/7/2021**.
- 12.** After examining the documents, PW2 said that the signature in the sale agreement was not similar to the ones in the referenced documents. PW2 said that he formed his opinion on the discrepancies after comparing side by side all the features of the said signatures. PW2 produced his report dated **2/9/2024** **PMFI-No. (4)** as **P. Exhibit No. (4)**. In cross-examination, PW2 said that the signature in the sale agreement does not share the features of the known signatures of the plaintiff.
- 13. Geoffrey Chavaregi Lodogoli** testified as **DW1**. He told the court that in **August 2010**, he met a friend named Bernard Kubende, whom he informed of his

desire to purchase land. DW1 said that his friend introduced him to the plaintiff's mother, Rebecca Wandaka Obdi, who informed him that she had a parcel of land belonging to her daughter, who had authorized her to sell the land.

- 14.** DW1 said that they agreed with the mother on behalf of the plaintiff on a consideration of **Kshs. 500,000/=**. DW1 said that he paid the first instalment of **Kshs.470,000/=** to the plaintiff, who was present with her mother, in August **2010**, in the presence of his friend. DW1 told the court that on **15/8/2012**, he paid the balance, and thereafter commenced developing the land.
- 15.** Further, DW1 said that the transaction was formalized in the office of Kiarie & Co. Advocates when the plaintiff was called by the advocate and agreed on the terms of the sale agreement. DW1 said that he started the construction of his home on the suit property with full knowledge of the plaintiff, who, unfortunately, has changed tune and is calling him a trespasser on the suit land.
- 16.** DW1 denied that the sale agreement was forged or that the transaction was fraudulent. DW1 denied being summoned to appear before the Directorate of

Criminal Investigations or the police, on the allegation of forgery or fraud. DW1 relied on a copy of the sale agreement dated **15/8/2012**, photographs showing his residential home on the suit land, as **D. Exhibits No. (1) and 2(a), (b), and (c)**.

- 17.** In cross-examination, DW1 admitted receiving a demand letter dated **8/4/2015**, which he did not respond to; he later sent a different one. DW1 admitted that the plaintiff was not actually personally or physically in attendance during the execution of the sale agreement; otherwise, her part in the agreement was signed by Rebecca Wandaka Obdi.
- 18.** DW1 said that the said mother was not described in the sale agreement as acting as an authorized agent of the plaintiff. DW1 said that the plaintiff did not attend the advocate's office meeting when they were formalizing the sale agreement.
- 19.** DW1 said that he never indicated in the witness statement whether he met, negotiated, and agreed on the terms and conditions of the sale agreement with the plaintiff. DW1 clarified that the date of the payment of **Kshs.470,000/=** was not indicated, nor was there any acknowledgment note for the same, either by the plaintiff or her mother.

- 20.** In addition, DW1 said that he had no evidence of any telephone communication that took place between the plaintiff and her mother when the parties went to regularize the sale at Mr. Kiarie's Advocate offices. DW1 admitted that the plaintiff's mother had no power of attorney to dispose of the land on behalf of the plaintiff.
- 21.** DW1 said that he conducted an official search to establish the owner of the land. The defendant did not present such a certificate before the court. DW1 said that he did not seek a formal authority from the plaintiff to her mother while transacting on the land.
- 22.** Asked questions by the Court, DW1 said that **Clause 9** of the sale agreement referred to an earlier agreement dated **23/11/2010**, whose completion date was **90** days. Equally, DW1 admitted that **Clause 6** of the sale agreement was silent on the date of taking vacant possession.
- 23.** Further, DW1 admitted that he had yet to obtain completion documents for the sale from the plaintiff, nor had he demanded the same to complete the transaction. DW1 said that though he received two demand letters, he did not respond to any of them.

- 24. Stephen Mwangi Irungu** testified as **DW2**. He relied on a witness statement dated **26/5/2025** as his evidence-in-chief. DW2 confirmed to the court that he was a witness to the sale agreement dated **15/8/2012** at the advocate's office. DW2 said that he witnessed the two parties and their witnesses execute the sale agreement.
- 25.** At the close of the defence, parties were directed to put in written submissions. The plaintiff relies on written submissions dated **26/11/2025**, isolating six issues for the court's determination. It was submitted that the plaintiff has proved that she was neither a signatory to the sale agreement, nor did she sell, receive, or acknowledge any consideration from the defendant, nor did she authorize her mother to do so.
- 26.** Therefore, the plaintiff submits that the defendant appears to have dealt with an authorized person to deal with her land, rendering the sale agreement unenforceable, since it is in contravention of **Section 3** of the Law of Contract Act. The plaintiff invokes the *nemo dat quod non habet* doctrine as held in **Arthi Highway Developers Ltd -vs- West End Butchery Ltd & Others [2015] eKLR** and

**Diamond Trust Bank Kenya Ltd -vs- Said Hamad Shamisi & 2 others [2015] eKLR.**

- 27.** The plaintiff submits that the defendant has failed to prove payment of the consideration. Further, it is submitted that the failure to join the said Rebecca Wandaka Obdi as a party to the suit and call P.K. Kiarie, advocate, as a witness to the sale agreement rendered the defendant's defence unsubstantiated, contrary to **Sections 107-109** of the Evidence Act.
- 28.** The defendant relies on a written submission dated 15/11/2025. He submits that the plaintiff is seeking to have both the suit land and the consideration, which amounts to unjust enrichment. Reliance is placed on **Willy Kimutai Kitilit -vs- Michael Kibet [2018] KECA 573 (KLR)**, where the court held that equity protects a purchaser who has been put in possession upon sale. The defendant submits that the plaintiff has been holding the suit land in trust for the defendant since August **2010**.
- 29.** Similarly, the defendant submits that equity aids the vigilant and not the indolent, and the plaintiff who took almost a decade to institute this suit is guilty of laches, acquiescence, and bad faith. The defendant submits that the plaintiff is approbating and

reprobating, having received the consideration yet denying the transaction. Reliance is placed on **William Kipsoi Sigei -vs- Kipkoech Arusei & another [2019] KECA 446 (KLR), Kiplagat Kotut -vs- Rose Jebor Kipngok [2019] eKLR,** and **Chase International Investment Corporation and Another -vs- Laxman Keshra and 3 others [1978] KECA 7 (KLR).**

**30.** Having reviewed the pleadings and the evidence tendered, the issues calling for the court's determination are:

**(1) If the plaintiff is entitled to the reliefs of eviction and a permanent injunction against the defendant on account of trespass.**

**(2) If the defendant is justified in an alleged purchaser's interest in the suit land.**

**(3) What is the order as to costs?**

**31.** Trespass is defined by **Section 2** of the Trespass Act, Cap **294**, as where a person enters into or upon property in possession or occupation of another, with an intention to commit an offence. In **M'Rikanya - vs- M'Mbijiwe [1984] eKLR,** trespass was defined as a violation of the right to possession, and a plaintiff must prove that he has the right to immediate and exclusive possession of the land.

32. In **Margaret Iminza Luyayi -vs- Moses Opudo Mudaka[2014] eKLR**, the court said that trespass is wrongful entry or violation of the right to possession. In **Ochako Obinchu -vs- Zachary Oyoti Nyamongo [2018] eKLR**, the court cited *Clark & Lindesel on Torts 18<sup>th</sup> Edition page 923*, that the onus is on a plaintiff to prove that he was the owner of the suit property and that the defendant had invaded and occupied the same without any justifiable cause.
33. In **Vaz -vs- Oyatsi & Others Civil Appeal No. E035 of 2022 [2025] KECA 251 [KLR] (21<sup>st</sup> February 2025) (Judgment)**, the court cited **Ben Mulwa -vs- Jonathan Mutunga Mweke [2016] eKLR**, that each action of trespass constitutes a fresh and distinct cause of action. Further, the court cited **Muthiora -vs- Marion Muthama Kiara [2012] KECA 28 [KLR]**, that under Cap 294, trespass is entry into, remaining upon, erecting any structure on, or cultivating on private land without the consent of the occupier thereof.
34. A land sale agreement must pass the legal muster of conforming to **Section 3(3)** of the Law of Contract Act, as read together with **Section 38** of the Land Act. The salient features of a land sale agreement

include the capacity of the parties to transact, the agreement must be in writing, and signed by all the parties. There must be consideration. A sale agreement must be witnessed and executed before the witnesses.

- 35.** Breach of contract is defined under *Black's Law Dictionary 9<sup>th</sup> Edition, page 213*, as a violation of a contract obligation by failing to perform one's own promises, by repudiating it, or by interfering with another party's performance. See **Ramji Meghji Gudka Limited v Getembe Thrift Company Limited & 2 others (Civil Appeal 45 of 2019) [2025] KECA 22 (KLR) (17 January 2025) (Judgment).**
- 36.** Courts do not rewrite contracts between the parties, who are bound by the terms of their contract, unless coercion, fraud, or undue influence are pleaded and proved. See **National Bank of Kenya -vs- Pipe Plastic Samkolit (K) Ltd & Another [2001] KLR 112.**
- 37.** A court cannot enforce illegal contracts. A party seeking to enforce a sale agreement must prove its validity. In **Ongera & Others -vs- Makwae [2025] KECA 535 [KL]R (21 March 2025) (Judgment),**

the court held that it is essential to prove the existence and terms of a sale agreement, if it occurred, and the consideration paid.

- 38.** In **Kenya Commercial Finance Co. Ltd -vs- Kipngeno Arap Ngeny & Another [2002] KECA [306] KLR**, the court held that the doctrine of frustration operates to excuse from further performance of a contract, where it appears from the nature of the contract and the surrounding circumstances, that the parties have contracted for on the basis that some fundamental thing or state of mind will continue to exist.
- 39.** In construing a contract, a court of law has to interpret it the same way parties have reduced it into writing as to the terms and conditions, unless it is challenged on account of illegality or fraud. In **RTS Flexible Systems Limited -vs- Molkerei Alois Müller GmbH [2010] UKSC 14**, the court held that a court looks not into the subjective state and mind of the parties, but upon consideration of who was committed between them by words or conduct, and whether that leads to a conclusion that they intended to create a legal relationship.

40. In **Dina Management Ltd -vs- County Government of Mombasa & Others [2023] KESC 30 [KLR]** and in **Torino Enterprises Ltd -vs- Attorney General [2023] KESC 79 [KLR]**, the court described what due diligence is expected of a bona fide purchaser. Further, in **Obiero -vs- Otwenya (Civil Appeal 145 of 2019) [2025] KECA 541 (KLR) (21 March 2025) (Judgment)**, the court held that constructive trust had properly been applied by the trial court to rescue the respondent from an otherwise oppressive situation.
41. Applying the foregoing case law to the instant suit, the plaintiff's case is that she did not sign the alleged sale agreement with the defendant to grant him vacant possession of the  $\frac{1}{4}$  an acre of her land, which the defendant is occupying, alleging the purchaser's interests.
42. The plaintiff terms the sale agreement as fraudulent or forged. She has produced evidence that the signature on the sale agreement does not belong to her. On the other hand, the defendant admits that he was sold the land by the plaintiff's mother, who had the authority to dispose of the suit land on her behalf.

- 43.** The burden was on the defendant to prove that a valid contract of sale of land exists with the plaintiff. He who alleges must prove. See **Sisto Wambugu - vs- Kamau Njuguna [1983] KLR**. Payment of consideration has to be proved. The signature of the sale agreement by all the parties in front of a witness has to be substantial. Performance by the parties of their obligation has to be proved. See **William Kazungu Karisa -vs- Cosmus Angore Chanzera [2006] eKLR**.
- 44.** In **Korir -vs- Njoki & Another Civil Appeal No. 34 of 2020 [2023] KECA 439 [KLR] (14<sup>th</sup> April 2023) (Judgment)**, failure to call key witnesses to prove the validity of the sale agreement, or to prove the meeting between the seller and the legality of the title was found fatal.
- 45.** In this suit, the plaintiff has denied entering into any land sale agreement with the defendant. Equally, the plaintiff has denied authorizing the sale or approving the sale agreement signed by her mother, or allowing her to receive any consideration, or consenting to the defendant's entry onto her land on account of an alleged sale.

- 46.** The signature appearing on the sale agreement has been found forged or not belonging to the plaintiff by a forensic document examiner. The defendant failed to call as witnesses the plaintiff's mother and the lawyer who witnessed the sale agreement or saw the parties execute the alleged sale agreement.
- 47.** Fraud refers to the misrepresentation of facts or concealment of facts with the intention to mislead. Illegality occurs where there is non-compliance with the law. Justifiable cause means grounds for action that are in accord with sufficient reason that can be justified or reported as correct. The plaintiff has proved through evidence the ownership of the suit land. It is the defendant who should justify being on the land without the consent of the owner, who, in law, is entitled to unlimited use, occupation, and possession of the land.
- 48.** The sale agreement, which the defendant relies upon, has failed to meet the legal muster as per **Section 3(3)** of the Law of Contract Act and **Section 38** of the Land Act. Trespass is a violation of the right to ownership or use. Trespass as a tort is actionable *per se*. The plaintiff has not authorized the

defendant to enter, occupy, construct a house, or remain on her land.

**49.** In my considered view, the plaintiff has met the ingredients of trespass as set out in **M'Rinkanya - vs- M'Mbijiwe** (*supra*). The title deed held by the plaintiff has not been attacked under **Sections 24, 25, and 26** of the Land Registration Act. She is therefore entitled to the relief of driving out the defendant from her land, since it is an unlawful occupation. See **Moya Drift Farm Ltd -vs- Theuri [1973] 1EA 114.**

**50.** In the circumstances, I allow the plaintiff's suit. An eviction notice of **90 days** is hereby issued for the defendant to vacate the land. In default, there will be a forceful eviction thereafter at the defendant's costs and expenses.

**51.** Costs to the plaintiff.

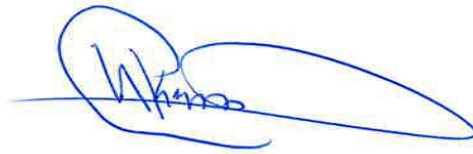
**52.** Orders accordingly.

**Judgment dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **4<sup>th</sup>** day of **February 2026.**

**In the presence of:**

Court Assistant - Dennis

No appearance



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

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